

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KURTIS LEE SOLOMON,

Defendant.

Case No. 3:22-CR-00022-ART-CSD

ORDER

I. Admissibility of Exhibits Containing Child Pornography Images

The Government seeks to introduce exhibits at trial which contain images of child pornography. Defendant objects not to the introduction of any images, but to the volume of images the Government proposes (6 unredacted and 80 redacted images).

Defendant filed a proposed stipulation, which the Government did not accept. The Defendant offers to stipulate that the 413 files found in the web cache on the ACER laptop computer serial number NXMKBA00741600FC3400 constitute child pornography as defined in Title 18, United States Code, Section 2256(8), as well as that these web cache files include at least one image of a prepubescent minor or a minor who had not attained 12 years of age. (ECF 162-1.)

Courts, including the Ninth Circuit, have generally held that under *Old Chief v. U.S.*, 519 U.S. 172 (1997), the Government is permitted to introduce limited images of child pornography in criminal cases regarding receipt and/or possession of child pornography, even where a Defendant has stipulated or offered to stipulate that the images contain child pornography. *U.S. v Gano*, 538 F. 3d 1117, 1123-1124 (9th Cir 2008); *U.S. v. Morales-Aldahondo*, 524 F.3d 115,

1 120 (1st Cir 2008); *U.S. v. McCourt*, 468 F.3d 1088, 1091 (8th Cir. 2006); *see also*
2 *United States v. Walsh*, 796 Fed.Appx. 337, 338-339 (9th Cir. 2019); *U.S. v.*
3 *Kowaleski*, 593 Fed.Appx. 645, 645-646 (9th Cir 2015). Additionally, even when
4 a stipulation as to the content of images is present, the images may still be
5 probative of another aspect of the charge, such as knowledge or intent. *Ganoe*,
6 538 F. 3d at 1123-1124; *Morales-Aldahondo*, 524 F.3d at 120; *U.S. v. Hay*, 231
7 F.3d 630, 638-639 (9th Cir. 2000); *U.S. v. Dodds*, 347 F.3d 893, 899 (11th Cir.
8 2003). At the same time, the Court must take into account an offered stipulation
9 in analyzing under FRE 403 whether the probative value of the images outweighs
10 its prejudicial effect. "*Old Chief* held that a defendant's offer to stipulate to an
11 element of a crime is relevant evidence that must be factored into a district court's
12 analysis under Rule 403 " *United States v. Merino-Balderrama*, 146 F.3d 758, 762
13 (Citing *Old Chief*, 519 U.S. at 186.) The quantity and substance of the images
14 also must be considered in weighing the admission of these images under FRE
15 403. *See e.g. Ganoe*, 538 F. 3d at 1123-1124; *Merino-Balderrama*, 146 F.3d at
16 761-763 (9th Cir. 1998).

17 The Court finds that admission of a limited number of images is
18 appropriate under FRE 403. The defense concession that all of the images meet
19 the statutory definition of child pornography is significant in that it eliminates
20 the need for the Government to prove that fact. The Court agrees with the
21 Government however that the images remain probative of the Defendant's
22 knowledge, intent, and lack of mistake as to age. Specifically, the Government
23 argues that images of young children could rebut Defendant's statement that
24 such images popped up, appeared accidentally without him searching for them,
25 or appeared when searching of images of teens. Some of these images match
26 descriptions of what Defendant has previously stated he saw on his computer.
27 The dates certain were files saved to the Defendant's computer may also be
28 relevant.

Several measures are considered to mitigate prejudice. The Government has identified redacted images that have blacked out obscene content but in which the ages of children are visible. Such redacted images, which are graphic and highly prejudicial but would be less inflammatory to the jury, remain probative of knowledge and intent. To the extent the Government seeks to show that certain images are representative, expert testimony identifying images similar those shown to the jury could be offered in lieu of additional images.

Admissible Images:

To aid in deciding on the admissibility of images, the Court ordered the Government to provide a list of their top 15 images with descriptions. (ECF No. 158.) The Court will permit the following exhibits from the Government's list, to be introduced at trial. The images may each be displayed briefly to the jury. The Court denies admission of the remaining images as redundant and more prejudicial than probative.

1. Exhibit 54-a f_001224 (unredacted gif/video) – Government List #1

This video is probative of Defendant's knowledge, including lack of mistake as to age, and corroborates statements the Defendant made.

2. Exhibit 47-a f_00123a (unredacted gif/video) – Government List #3

This video is probative of Defendant's knowledge, including lack of mistake as to age, and corroborates statements the Defendant made.

3. Exhibit 51-a f_000b21 (redacted image) - Government List #6

This image is probative of the Defendant's knowledge because it contains the word "pedo," as well as probative as to lack of mistake as to age. The fact that it came from the same website as other images may be relevant to intent.

4. Exhibit 49-a f_000afa (redacted image) - Government List #7

This image is probative of the Defendant's knowledge and lack of mistake because of its title, which describes a six-year-old daughter.

5. Exhibit 53-p f_000b1f (redacted image) - Government List #14

1 This image is probative of the Defendant's knowledge and intent because it
2 contains the language "Oral Pedo Adventures." It also corroborates statements
3 the Defendant made.

4 **6. Exhibit 53-o f_000b1e (redacted image) - Government List #15**

5 This image is probative because it tends to match search criteria found on
6 Defendant's laptop. It is not duplicative because it differs in substance from the
7 other admissible images.

8 Additionally, as discussed on the record on December 4, 2024, the Court
9 has determined that Exhibit 38-a f_001239 (unredacted gif/video) – Government
10 List #5 is more prejudicial than probative. The Court offered to allow the
11 Government to propose a different image depicting a baby, but the Government
12 declined to do so. However, if the Government would like to propose a different
13 image which depicts a baby, the Court will entertain this request.

14 **II. Permanent Sealing and Presentation of Child Pornography**
15 **Exhibits**

16 The Government has requested that the exhibits containing images of child
17 pornography admitted at trial be permanently sealed, and that these exhibits not
18 be viewable by the courtroom audience during their presentation at trial. (ECF
19 No. 144 at 12-16). Specifically, the Government proffers that it is required under
20 18 U.S.C. § 3509(d)(2), "All papers to be filed in court that disclose the name of
21 or any other information concerning a child shall be filed under seal without
22 necessity of obtaining a court order." The Court agrees that because the images
23 contain unredacted faces of child victims and it is not possible for the government
24 to redact the images to a point where the identifying information of the victims is
25 eliminated, the images introduced at trial should be permanently sealed.

26 For the reasons stated, these exhibits will be kept under permanent seal.
27 The Clerk's office is directed to hold the exhibits at the conclusion of the trial in
28 its sealed records room. Pursuant to 18 U.S.C. § 3509(d)(2)(B), the Government

1 is ordered to file a version of each exhibit “with the portions of it that disclose the
2 name of or other information concerning a child redacted, to be placed in the
3 public record.”

4 Additionally, the Court will grant the Government’s request to restrict the
5 display of these images at trial so that they are not viewable by the audience.
6 “[T]he right to an open trial may give way in certain cases to other rights or
7 interests, such as the defendant’s right to a fair trial or the government’s interest
8 in inhibiting disclosure of sensitive information.” *Waller v. Georgia*, 467 U.S. 39,
9 46 (1984). The Court finds that here, the interest in inhibiting disclosure of the
10 sensitive nature of child pornography images containing the faces of victims
11 outweighs the public’s interest in viewing these images at trial. *See United States*
12 *v. Killingbeck*, 616 F. App’x 14, 16 (2nd Cir. 2015) (trial court did not err in
13 granting Government’s request not to display child pornography images on
14 monitors viewable by audience during trial).

15 Accordingly, these exhibits will be displayed on the courtroom screens to
16 the jury, parties, the witness, and counsel, but the courtroom’s audience screen
17 will be off during the presentation of exhibits containing child pornography
18 images.

19 **III. Conclusion**

20 It is therefore ordered that the Clerk’s office is directed to hold the exhibits
21 on page 3-4 of this order at the conclusion of the trial in its sealed records room.

22 It is further ordered that pursuant to 18 U.S.C. § 3509(d)(2)(B), the
23 Government is ordered to file a redacted version of each exhibit.

24 Dated this 4th day of December, 2024.

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26 

27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE